

REMARKS

Claims 1, 13, 23 and 25-26 have been amended herein. Claims 2 and 16-19 were previously canceled herein without prejudice or disclaimer. Claims 27-28 have been added herein. Claims 1, 3-15 and 20-28 are pending following entry of this amendment. No new matter has been added.

35 U.S.C. §112 Rejections

Claim 22 stands rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. More particularly, the Examiner objects to the recitation of “wherein said flexible bag is located in a dispenser having capacity for only a single flexible bag at a time.” Applicant respectfully traverses the rejection.

Applicant respectfully directs the Examiner’s attention to Figures 6 and 7 of the original application which clearly depict a single bag in a dispenser unit (without room for more) in those embodiments. The accompanying description of those embodiments is consistent with Applicant’s claim language. Accordingly, Applicant respectfully requests the reconsideration and allowance of claim 22.

Claims 23-26 stand rejected under 35 U.S.C. §112, second paragraph as being indefinite. More particularly, the Examiner indicated that the language relating to a surface variation was unclear. Applicant respectfully submits that these rejections are moot as Applicant has amended claim 23 herein to recite: “wherein ***a base of said bag has seams arranged to form a surface variation to maintain a pocket within said collapsible bag*** and facilitate drainage of liquid product from said bag during dispensing.” Claim 24 depends upon claim 23. Claims 25 and 26 have also been amended and furthermore now depend upon claim 1. Accordingly, Applicant respectfully requests the reconsideration and allowance of claims 23-26.

35 U.S.C. §103(a) Rejections

Claims 1, 3-6, 11 and 22-26 were rejected under 35 U.S.C. 102(b) as being unpatentable over J.L. Kastamo et al, United States Patent No. 3,343,719 (hereafter “Kastamo”) in view of Finley et al, United States Patent No. 3,401,043 (hereafter “Finley”). Applicant respectfully traverses all of the rejections.

The claimed invention provides a mechanism for distributing flexible bags filled with a beverage or liquid food product under sterile conditions to a consumer of the beverage or liquid food. More specifically, the claimed invention provides a method of safely filling, distributing and dispensing beverages and liquid food products in a Hazard and Critical Control Points system (HAACP). The HAACP system is maintained throughout each step of the filling, distribution and dispensing process. Hazards associated with beverages or food in such a system include physical hazards, such as of impact injury, or chemical or biological hazards such as posed by toxins, microbes or other contaminants. Critical control points are points in the distribution system where such potential hazards can be minimized or avoided (Applicant’s specification, page 2, lines 26-29). Bulk transport containers are used to avoid contamination during transport.

Independent claim 1 as amended recites:

A method of distributing flexible bags filled with a beverage or liquid food product under sterile conditions to a consumer of said beverage or liquid food product in return for payment and comprising the steps of:

- a) filling said flexible bags through a spout or tap forming part of each flexible bag and acting as both a filling inlet and dispensing outlet and thereby avoiding residue from a form, fill and sealing process, the filling occurring under sterile conditions, said flexible bags having been previously sealed in a manufacturing process;
- b) **locating said flexible bags, filled with said beverage or liquid food product, in a bulk transport container** not used for dispensing the product to an end consumer and having a capacity for a plurality of flexible bags while protecting the bags from damage and contamination of beverage or liquid food product during transportation;
- c) transportation, by a commercial distributor, of the bulk transport container in which the filled flexible bags are located for protection from damage and contamination to the consumer, **the bulk transport containers separate from a**

transportation conveyance used by the commercial distributor to transport the bulk containers;

- d) unloading a required quantity of flexible bags filled with beverage or liquid food product for delivery to the consumer; and
- e) delivering each flexible bag for dispensing the beverage or liquid food product contained in the flexible bag to be consumed by an end consumer, and wherein, **through each step, a hazard and critical control points system is maintained during filling, distribution and dispensing so that beverage or food liquid product is delivered to the end consumer for consumption without taint or adverse effect.**

Applicant respectfully submits that Kastamo and Finley fail to disclose all of the elements of Applicant's claim 1 as amended.

In the Office Action, the Examiner relies upon Kastamo as disclosing all of the elements of the previous version of claim 1 except for the sterile filling of the flexible bags for which the Examiner relies upon Finley. See Office Action, page 5. However, Applicant's claim 1 as amended recites that a hazard and critical control points system is maintained throughout each step of the filling, *distribution and dispensing process*. Kastamo and Finley fail to disclose, teach or suggest this claim element.

Kastamo describes a 1965 invention for transporting milk and other liquids in flexible packages. Kastamo describes a system in which flexible plastic film bags may be filled with milk. Each of the plastic film bags is equipped with a dispensing valve (16) (col. 3, lines 28-50). A number of the plastic bags are then placed into thick paper bags (25) with the dispensing valves deposited downwardly in such a position that the valves are in proximity to a tear tab (33) in the paper bag (see Figures 2-3, and col. 3, lines 51-65 and col. 5, lines 28-42). Upon delivery to a consumer, the tear tab is torn to expose the dispensing valve of one of the flexible plastic film bags and milk is dispensed from the valve (col. 8, lines 11-36). The weight of additional bags of milk on top of the dispensing bag or other weights are used to dispense milk (col. 4, lines 27-37). Of further note, the paper bag into which the plastic bags are placed for transport also appears to be the container delivered to the end user.

Kastamo fails to address problems of contamination during distribution and dispensing. Kastamo is not concerned with hazard identification and solution at critical control points during

distribution and dispensing. In fact it appears Kastamo only contains two references to distribution. At col. 3, lines 66-70 Kastamo discusses that the individual bag assemblies are respectively delivered to individual dispensing locations. At col. 5, lines 44-47, Kastamo discusses that the bag assembly illustrated in Figure 3 may be delivered by route delivery trucks to the customer homes *in the same manner as is done with bottles*. There is no discussion of identifying and minimizing physical and contamination hazards during distribution.

Furthermore, the specific claimed technique for minimizing hazards during distribution, *locating said flexible bags, filled with said beverage or liquid food product, in a bulk transport container* is also not disclosed or suggested by Kastamo and Finley. The bulk transport container of the claimed invention encloses and protects the flexible bags filled with beverage or liquid food products during transportation. The use of a truck, such as suggested by the Examiner in the Office Action (page 4), does not do anything to reduce contamination risks. As discussed above, Kastamo may deliver their flexible bags in much the same manner *as is done with bottles* (Kastamo, col. 5, lines 44-47). Such a technique of loading the flexible bags into a truck expose the bags to dust, oil and other contaminants which are present during the dispensing of the product. However, to further clarify the distinction, Applicant has also amended claim 1 herein to recite that the bulk transport containers of the claimed invention are *separate from a transportation conveyance used by the commercial distributor to transport the bulk containers*. Kastamo and Finley are silent with respect to this claim element.

Similarly, there is no indication that Kastamo (or Finley) minimizes hazard and critical control points during dispensing of product. As previously discussed, Kastamo uses the same bags to transport and dispense the milk and the bags when dispensing milk would have already been exposed to contaminants. Additionally, the Kastamo distribution apparatus appears to merely pile bags one on top of the other and use the weight of the bags to dispense milk. This technique may result in old milk becoming trapped in the lower bag and being dispensed well after it is safe to consume.

Finley fails to remedy these shortcomings as it is silent with regard to minimizing hazard and critical control points during distributing and dispensing of product.

Accordingly, for at least these reasons, Applicant requests the reconsideration and allowance of claim 1. Claims 3-6, 11 and 22-26 are dependent upon claim 1 and are therefore allowable at least by virtue of their dependency.

Claim 7 was rejected under 35 U.S.C. §103(a) as being unpatentable over Kastamo in view of Finley in further view of www.glacermountain.com (hereafter “Glacier”). Glacier was cited by the Examiner as disclosing a commercial distributor that supplied a water dispenser. However claim 7 is dependent upon claim 1 and Glacier fails to remedy the failings of Kastamo and Finley that were discussed above with respect to claim 1. Accordingly, for at least this reason, the reconsideration and allowance of claim 7 is respectfully requested.

Claims 8-10 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kastamo in view of Finley in further view of www.chep.com (hereafter “Chep”). The Examiner cited Chep as disclosing a container of variable capacity (claim 8), a bulk transport container with a cubic design having a smooth wall and base (claim 9) and a bulk transport container made of polymer suitable for use in food grade environments (claim 10). However claims 8-10 are dependent upon claim 1 and Chep fails to remedy the failings of Kastamo and Finley that were discussed above with respect to claim 1. Accordingly, for at least this reason, the reconsideration and allowance of claims 8-10 is respectfully requested.

Claims 12-15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kastamo in view of Finley in further view of U.S. Patent Publication No. 2005/0059952 to Giuliano et al, (hereafter “Giuliano”). The Examiner cites Giuliano as disclosing a feature of dependent claim 12 (Office Action, page 15). However, Giuliano fails to remedy the shortcomings of Kastamo and Finley with respect to independent claim 1 upon which claims 12-15 depend. Accordingly, for at least this reason, the reconsideration and allowance of claims 12-15 is respectfully requested.

Claims 20-21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kastamo in view of Finley in further view of U.S. Patent No. 6,360,925 to Erb et al, (hereafter “Erb”). The Examiner cites Erb as disclosing a feature of dependent claim 20 (Office Action, page 17). However, Erb fails to remedy the shortcomings of Kastamo and Finley with respect to

independent claim 1 upon which claims 20-21 depend. Accordingly, for at least this reason, the reconsideration and allowance of claims 20-21 is respectfully requested.

Claim 22 was rejected under 35 U.S.C. §103(a) as being unpatentable over Kastamo in view of Finley in further view of Nicolle, WO 99/37575 (hereafter “Nicolle”). The Examiner cites Nicolle as disclosing a feature of dependent claim 22, a dispenser with only a single flexible bag at a time (Office Action, page 18). However, Nicolle fails to remedy the shortcomings of Kastamo and Finley with respect to independent claim 1 upon which claim 22 depends. Accordingly, for at least this reason, the reconsideration and allowance of claim 22 is respectfully requested.

CONCLUSION

In view of the foregoing claim amendments and remarks, Applicant respectfully submits that all claims should be passed to allowance. Should the Examiner feel that a teleconference would expedite the prosecution of this application, the Examiner is urged to contact the Applicants' attorney at (617) 202-4617.

Please charge any shortage or credit any overpayment of fees to our Deposit Account No. 12-0080, under Order No. WPW-001US. In the event that a petition for an extension of time is required to be submitted herewith, and the requisite petition does not accompany this response, the undersigned hereby petitions under 37 C.F.R. § 1.136(a) for an extension of time for as many months as are required to render this submission timely. Any fee due is authorized to be charged to the aforementioned Deposit Account.

Dated: July 18, 2011

Respectfully submitted,

Electronic signature: /John S. Curran/
John S. Curran
Registration No.: 50,445
Nelson Mullins Riley & Scarborough LLP
One Post Office Square
Boston, Massachusetts 02109-2127
(617) 573-4700
(617) 742-4214 (Fax)
Attorney/Agent For Applicant